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IN THE

COURT OF APPEALS OF INDIANA

LEROY G. FENTRESS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-0705-CR-218
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
Cause No. 82C01-9312-CF-671

December 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Leroy G. Fentress appeals the denial of his motion to correct the amount of good time credit earned while he was in jail pending trial. We affirm.

FACTS AND PROCEDURAL HISTORY

Fentress was arrested on December 9, 1993. On September 1, 1994, he was sentenced to ten years for dealing in cocaine and given a twenty-year habitual offender enhancement. The abstract of judgment notes he had been confined for 266 days prior to sentencing. It does not mention good time credit. On March 26, 2007, Fentress filed a "Motion Requesting the Court to Correct the Amount of Jail Credit Time Awarded for Being in Credit Class One and Time Served." (Supp. Appellant's App. at 17). The court denied the motion, finding the correct amount of time had been awarded.

DISCUSSION AND DECISION

Fentress argues the trial court erred in denying his motion because it is statutorily required to separately state his credit time in the judgment of conviction. Ind. Code § 35-38-3-2 states in relevant part:

> (a) When a convicted person is sentenced to imprisonment, the court shall, without delay, certify, under the seal of the court, copies of the judgment of conviction and sentence to the receiving authority.
>
> (b) The judgment must include:
>
> * * * * *
>
> (4) the amount of credit, including credit time earned, for time spent in confinement before sentencing. . . .

In *Robinson v. State*, our Supreme Court stated, "We interpret Indiana Code § 35-38-3-2 to require that a trial court's judgment of conviction separately include both the amount of time spent by the defendant prior to imposition of sentence and also the amount of

credit time earned in accordance with the defendant's credit time class." 805 N.E.2d 783, 789 (Ind. 2004).[1]

However, to avoid litigation arising from judgments that do not specify credit time earned, our Supreme Court adopted the following presumption:

> Sentencing judgments that report only days spent in pre-sentence confinement and fail to expressly designate credit time earned shall be understood by courts and by the Department of Correction automatically to award the number of credit time days equal to the number of pre-sentence confinement days. In the event of any pre-sentence deprivation of credit time, the trial court must report it in the sentencing judgment. Because the omission of designation of the statutory credit time entitlement is thus corrected by this presumption, such omission may not be raised as an erroneous sentence.

Id. at 792.

Fentress' motion is essentially a motion to correct erroneous sentence. *See Murfitt v. State*, 812 N.E.2d 809, 809-10 (Ind. Ct. App. 2004) (treating a "Motion for Pretrial Credit for Time Served" as a motion to correct sentence). Due to the *Robinson* presumption, Fentress cannot raise this issue in a motion to correct erroneous sentence. *Robinson*, 805 N.E.2d at 792. Therefore, we affirm.

Affirmed.

CRONE, J., and DARDEN, J., concur.

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[1] The Court held the judgment of conviction, and not the abstract of judgment, is the controlling document. *Robinson*, 805 N.E.2d at 794. Fentress' appendix includes the abstract of judgment, which notes he was confined for 266 days prior to sentencing and does not specifically mention credit time. His supplemental appendix contains the chronological case summary, which states, "Credit is given for 266 days." (Supp. Appellant's App. at 9.) The record does not contain the judgment of conviction. We presume for the sake of argument the judgment of conviction mirrors the abstract of judgment and the CCS.